

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
WILIE WELLINGTON )  
d.b.a. LYNNWOOD MOBIL HOMES, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHE No. 800

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$250 civil penalty for an alleged unlawful outdoor fire; having come on regularly for a formal hearing before the Pollution Control Hearings Board on the 7th day of July, 1975, at Seattle, Washington; and appellant Wilie Wellington having made no appearance, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and Board member present at the hearing being chairman Chris Smith; and the Board having entered on the 9th day of July, 1975 its proposed Findings of

Fact, Conclusions of Law and Order; and the Board having served said proposed Findings, Conclusions and Order upon all parties herein by certified mail, return receipt requested and twenty days having elapsed from said service; and

The Board having received exceptions to said proposed Findings, Conclusions and Order from appellant; and the Board, through its presiding officer, having requested that appellant explain his failure to attend the scheduled hearing, and in addition, to show a meritorious defense; and

The Board having considered appellant's response to the presiding officer's request; now therefore, with respect to appellant's reply, the Board concludes that:

1. Appellant has not shown good cause for his failure to appear the hearing scheduled on July 7, 1975, nor has he shown why a dismissal of his appeal would result in manifest injustice.
2. In any event, appellant has not shown a meritorious defense, and has not alleged any facts, which, if taken as true, would constitute a defense to the violation complained of.

The Board having denied appellant's exceptions; and being fully advised in the premises, now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings of Fact, Conclusions of Law and Order, dated the 9th day of July, 1975, and incorporated by this reference herein and attached hereto as Exhibit A, are adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

DONE at Lacey, Washington this 14<sup>th</sup> day of August, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith  
CHRIS SMITH, Chairman

W. A. Gissberg  
W. A. GISSBERG, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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Respondent. )

PCHB No. 800

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$250 civil penalty for an alleged unlawful outdoor fire in violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith, Chairman, at a formal hearing in Seattle, July 7, 1975. Hearing Examiner, David Akana, presided.

Appellant made no appearance; respondent appeared by and through its attorney, Keith D. McGoffin. Jennie Roland, Olympia court reporter, recorded the testimony.

EXHIBIT A

1 Having heard the evidence, having seen the exhibits, and being fully  
2 advised, the Board makes the following

3 FINDINGS OF FACT

4 I.

5 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d  
6 Ex. Sess., has filed with this Board a certified copy of its Regulation I  
7 containing respondent's regulations and amendments thereto.

8 II.

9 Section 9.02 of respondent's Regulation I provides that it is unlawful  
10 for any person to cause or allow any outdoor fire subject to certain  
11 listed exemptions. Section 3.29 provides for a civil penalty of up to  
12 \$250 per day for each violation of Regulation I.

13 III.

14 On January 13, 1975, respondent's inspector observed a smoke plume, and  
15 upon further investigation, found an outdoor fire located at appellant's  
16 place of business, 19321 Highway 99 in Lynnwood. Appellant produced a  
17 burning permit from the Lynnwood Fire Department. This permit expired on  
18 January 9, 1975. Appellant did not have a permit from respondent for an  
19 outdoor fire.

20 Appellant was issued a notice of violation for the outdoor fire.  
21 From this notice of violation, a civil penalty in the amount of \$250 was  
22 assessed. This penalty is the subject matter of this appeal.

23 IV.

24 Appellant timely filed its appeal to this Board. A hearing on this  
25 matter was scheduled for July 7, 1975. Appellant, having requested a

26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

1 hearing, did not avail itself of such.

2 V.

3 Any Conclusion of Law which should be deemed a Finding of Fact is  
4 hereby adopted as such.

5 From these Findings the Pollution Control Hearings Board comes to  
6 these

7 CONCLUSIONS OF LAW

8 I.

9 Appellant, not appearing at this hearing after having notice thereof,  
10 has voluntarily abandoned its appeal. Appellant's appeal must be dismissed  
11 for failure to appear to prosecute its appeal. WAC 371-08-165.

12 II.

13 Respondent presented a prima facie case from which it appears that  
14 appellant violated Section 9.02 of respondent's Regulation I, and for  
15 which a civil penalty of \$250 was properly assessed.

16 III.

17 Any Conclusion of Law which should be deemed a Finding of Fact  
18 is hereby adopted as such.

19 From these Conclusions, the Pollution Control Hearings Board enters  
20 this

21 ORDER

22 The appeal from the Notice of Civil Penalty No. 1898 assessing a  
23 penalty of \$250 is dismissed pursuant to WAC 371-08-165.

24 The assessment of the civil penalty is affirmed.  
25

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 DATED this 9th day of July, 1975.

2 POLLUTION CONTROL HEARINGS BOARD

3 Chris Smith  
4 CHRIS SMITH, Chairman  
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27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER